IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 293 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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COMMISSIONER OF INCOME TAX

Versus

ASSOCIATED PULS & PAPER MILLS LTD.

Appearance:

1. INCOME TAX REFERENCE No. 293 of 1994
MR TANVISH U BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 26/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

At the instance of the revenue, the following questions of law are referred for the opinion of this Court for assessment year 1984-85:-

(i) Whether, the Appellate Tribunal is right in law and on facts in holding that if the unpaid tax liability is paid within the time stipulated for filing of return under section 139(1) additions cannot be made invoking the provisions of section 43B?

(ii) Whether, the Appellate Tribunal is right in law and on facts in holding that the expenses incurred for repairs for motor car are allowable under section 31 of the Act and the same cannot be taken into consideration for computing disallowable amount under section 37(3A) and thereby deleting the said disallowance?

2. Heard Mr Tanvish Bhatt, learned counsel appearing for the applicant- revenue. Nobody appears on behalf of the respondent - assessee, though notice was duly served.

3. As far as the first question is concerned, the issue is squarely covered by the decision of the Apex Court in the case of Allied Motors (P) Ltd. vs. CIT, 224 ITR 677.

Following the aforesaid decision, we are of the view that the Tribunal was right in holding that if the unpaid tax liability is paid within time stipulated for filing of return under Section 139(1), additions cannot be made invoking the provisions of Section 43B of the Act.

We, therefore, answer the above question referred to us in the affirmative i.e. in favour of the assessee and against the revenue.

4. So far as question No.2 is concerned, it relates to the inclusion of repairs to motor car expenses amounting to Rs.43,303/- for the purpose of computing the disallowable amount under Section 37(3A) of the Act. The Tribunal has observed in its order that if the expenses for repairs of motor car amounting to Rs.43,303/- is excluded, the remaining items of expenses covered by Section 38(3A) would be below Rs.1 lac and hence no disallowance can be made under Section 37(3A) of the Act. The Tribunal has referred to its earlier decisions in the case of other assesses and following the same, the

Tribunal has directed the ITO to delete the said disallowance.

Being aggrieved by the aforesaid decision of the Tribunal, the revenue has come in reference before this Court.

5. Mr Tanvish Bhatt, learned Standing Counsel appearing for the revenue has submitted that the issue involved in the present case is decided by various High Courts in favour of the assessee. He has drawn our attention to the Full Bench decision of the Kerala High Court in the case of CIT vs. Travancore Cements Ltd., 240 ITR 816 wherein it was held as under:-

"Section 31 of the Income-tax Act, 1961, allows deduction of expenditure on repairs and insurance of machinery, plant and furniture. "Plant" is defined in section 43(3) of the Act. It includes all motor vehicles including motor car. A plain reading of sub-section (1) of section 37 would make it clear that the deductions referred to under sections 30 to 36 are excluded from the purview of section 37(1). Section 37(3A) of the Act provides that notwithstanding anything contained in sub-section (1), 20 per cent, of any expenditure in excess of Rs. 1 lakh incurred by an assessee in respect of one or more of the items specified in sub-section (3B) shall not be allowed as deduction in computing the business income. Clause (ii) in sub-section (3B) specifies one such expenditure as "running and maintenance of aircraft and motor cars". The expenditure on repairs contemplated under section 31 is entirely different from the expenditure towards maintenance contemplated in section 37(3B). From the dictionary meaning of these two expressions it is very clear that the expression "repair" presupposes certain injury or partial destruction. But the expression "maintenance" does not do so. It means to keep a particular thing in its similar state. Hence, the expenditure on "repairs" dealt with under section 31 of the Act is entirely different from the expenditure on maintenance covered by sub-sections (3A) and (3B) of section 37. The non-obstante clause in section 37(3A) cannot have any overriding effect in respect of the other provisions pertaining to the allowance of expenditure under sections 30 to 36 of the Act. The expenditure towards repairs and premium paid

towards insurance of motor cars is deductible under section 31 of the Act and the same expenditure will not fall within the mischief os section 37(3A).

Mr Bhatt has further submitted that the similar view was taken by the Calcutta High Court in 214 ITR 473, 243 ITR 10 and 254 ITR 232.

6. We have gone through the facts of the present case and also perused the orders passed by the authorities below. We have also considered the authorities cited before us and we are in full agreement with the view taken by the Full Bench of Kerala High Court and the view taken by the Calcutta High Court in the aforesaid three decisions.

Following the aforesaid decisions, we are of the view that the Tribunal was right in holding that the expenses incurred for repairs of motor car are allowable under Section 31 of the Act and the same cannot be taken into consideration for computing disallowable amount under section 37(3A) and, therefore, deleting the said disallowance.

We, therefore, answer the question No.2 referred to us in the affirmative i.e. in favour of the assessee and against the revenue.

7. The Reference is accordingly disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

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